



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/701,207	11/04/2003	Luis A. Diaz	INST482CON2	5170
51017	7590	06/05/2007		
INTEL. PROP./ RND STRYKER CORPORATION 4100 EAST MILHAM AVE. KALMAZOO, MI 49001-6197			EXAMINER GRAY, PHILLIP A	
			ART UNIT 3767	PAPER NUMBER
			MAIL DATE 06/05/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/701,207

Applicant(s)

DIAZ ET AL.

Examiner

Phillip Gray

Art Unit

3767

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 05 March 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 183-201 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 183-201 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### DETAILED ACTION

This Office action is in response to applicant's communication filing of 3/5/2007.

Currently amended claims 183-201 are pending and rejected.

#### ***Response to Arguments***

Applicant's arguments filed 3/5/2007 have been fully considered but they are not persuasive. Applicant's argue that the addition of the amended claim language of "a pump chamber that is static relative to said base housing" overcomes the prior art of record. During examination, claim limitations are to be given their broadest reasonable reading. In re Zletz, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989); In re Prater, 415 F.2d 1393, 1404-1405, 162 USPQ 541, 550-51 (CCPA 1969). Under these guidelines examiner is defining the term "static" to mean "pertaining to or characterized by a fixed or stationary condition". Given this broad definition of the word static, examiner maintains that both Archibald and Epstein contain static pump chambers relative to the base housing. Examiner references that during operation (as in figure 7 of Archibald) the pump chamber is in a fixed and stationary condition. Examiner recommends that applicant use different language if applicant wants to emphasis that the applicants pump chamber isn't as transitory as the Archibald reference.

Applicant further specified that the actuator is a "member". Examiner is defining the word member as "a constituent part of any structural or composite whole". Examiner is of the position that the amended language of the "actuator member" for

"actuator" does not define any structure, spatial orientation, operational capacity, or functional limitation that the prior art of record (Archibald/Epstein) does not disclose as discussed in the rejections below. Nor does the term actuator "element" (as in amended claim 189) define any structure, spatial orientation, operational capacity, or functional limitation that the prior art of record does not, when given the broadest reading of the terms. Further considering the amended claim language of "butts against both valves simultaneously" or the member simultaneously abuts the valves, examiner is of the position that Archibald discloses that its actuator member (such as 98) would abut both valves (108 and 115 for instance) and would hold them shut.

Under these parameters and analysis, the elements disclosed in Archibald in view of Epstein are fully capable of satisfying all structural, functional, spatial, and operational limitations in the amended claims, as currently written, and the rejection is made and proper. See rejection discussion below.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein

Art Unit: 3767

were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 183-201 are rejected under 35 U.S.C. 103(a) as being unpatentable over Archibald (U.S. Patent Number 4,236,880) in view of Epstein et al. (U.S. Patent Number 5,100,380).

Archibald discloses an integrated medication delivery system for delivering medication to a patient suitable for complete sterilization by a fluid (generally column 3-16 and figures 1-19). The Archibald medication delivery system contains a base housing (23), a medication reservoir (from 14 to 16 and listed not shown) with multiple ports (not numbered), a pump assembly (108,11,114,117) with inlet and outlet that alternate between open and closed state (14,15), a port (14) and actuator and drive assembly (20 or 122, 98,96) (See figure 7 specifically), and Archibald contains structures that are fully capable of performing all limitations of the claims (i.e. Sterilization by fluid if device was opened by actuator 20). Archibald further discloses pinch levers at the outlet and inlet in a normally closed state (see 44,46,42), a continuous fluid flow path, and an actuator (20 and 102,118) that moves the levers to maintain the open/closed state for medication delivery. Archibald discloses a motor (94), engagement arms (44, 38, 46, ect), actuation arms (96 or 20) and pistons near the

Art Unit: 3767

plunger (109,111,115,117) with actuation and pump ends that contain a diaphragm seal (38,46,40,36) and pump housing (10,12) which draws medication into said pump housing (10) and to displace the medication.

Archibald discloses the claimed invention except for the first and second actuator positions (a first that holds the valves in a one open/one closed state, and a second that holds both valves open). Epstein teaches that it is known to use a first and second actuator positions as set forth in paragraphs at column 18 line 39 through column 19 line 3 to provide a way and operation to prime the fluid medication system or to provide a non-valved flow path for direct flow. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the medication delivery system as taught by Archibald with a first and second actuator positions as taught by Epstein, since such a modification would provide the medication delivery system with a first and second actuator positions for providing a way and operation to prime the fluid medication system or to provide a non-valved flow path for direct flow.

Concerning claim 201, Archibald in view of Epstein discloses the claimed invention except for the single component plunger/port valve combo. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make these elements in one piece integral, since it has been held that forming in one piece an article which has formerly been formed in two pieces and put together involves only routine skill in the art. *Howard v. Detroit Stove Works*, 150 U.S. 164 (1893).

Archibald in view of Epstein discloses all the elements as currently specified in the applicant's application, and these elements are fully capable of satisfying all

structural, functional, operational, and spatial limitations as currently written in the claims. Therefore the current rejection is made and proper.

### **Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phillip Gray whose telephone number is (571) 272-7180. The examiner can normally be reached on Monday through Friday, 8:30 a.m. to 4:30 p.m. EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Sirmons can be reached on (571) 272-4965. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



PAG



JUSTINE R. YU  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700

5/29/07